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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,507	09/18/2001	Donna J. Crowther	1999U033.US	1465

25959 7590 12/08/2003

UNIVATION TECHNOLOGIES LLC
5555 SAN FELIPE, SUITE 1950
HOUSTON, TX 77056

EXAMINER

RABAGO, ROBERTO

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 12/08/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

00019

Office Action Summary

Application No.

09/955,507

Applicant(s)

CROWTHER ET AL.

Examiner

Rob Rábago

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4,5,7-13 and 40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4,5,7-12 and 40 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 18.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Rejection over Langhauser is withdrawn in view of amendment. Applicants' submission of an appeal brief is acknowledged; however, this application will not be forwarded to the Board of Patent Appeals and Interferences at this time in view of new grounds of rejection as set forth below.

Information Disclosure Statement

2. The information disclosure statement filed 7/23/03 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the third reference has not been considered because it is illegible.

Claim Rejections - 35 USC § 103

3. Claims 4, 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (Organometallics 1994), optionally in view of Winter et al. (US 6,057,408) or Winter et al. (US 5,532,396) for the reasons set forth in item 6 of the Office action mailed 5/2/2003.

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4. Claims 4, 5, 7-12 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winter et al. (US 5,532,396) for the reasons set forth in item 7 of the Office action mailed 5/2/2003.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 4, 5, 7-12 and 40 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 27 in view of claim 7 of U.S. Patent No. 6,034,192. Although the conflicting claims are not identical, they are not patentably distinct from each other. Specifically, patented claim 27 specifies the catalyst system comprising a germanium-bridged metallocene, and claim 7 provides clear motivation to select a metallocene with a cyclic germanium bridge. Reasonable success would be expected because the combination of claim 1 and 7 indicates that a useful polymerization process would result.

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7. Applicant's arguments filed 7/21/2003 have been fully considered but they are not persuasive.

Regarding the stated interpretation of the claimed "bulky ligand metallocene-type catalyst" comprising "cyclopentadienyl-type bulky ligands", the examiner stands on the remarks of item 3 of the Office action mailed 5/2/2003. It is not contested that the term "metallocene" or "metallocene-type" may include structures other than those which include a cyclopentadienyl moiety. However, applicants' argument ignores the fact that the claims not only require that the catalyst structure be of "bulky ligand metallocene-type", but also that the ligands be "cyclopentadienyl ligand or cyclopentadienyl-type bulky ligand". As such, there is nothing in applicants' remarks which indicates that the art understands that "cyclopentadienyl ligand or cyclopentadienyl-type" includes the broad array of clearly non-Cp structures asserted by applicants. The inclusion of such structures as imido, cyclooctatetraene, and non-cyclic structures as within the meaning of "cyclopentadienyl-type" is clearly repugnant to the ordinary meaning of this term. Although applicants may be their own lexicographer, there is nothing in the specification which clearly redefines the accepted meaning of cyclopentadienyl to correspond to the extraordinary scope of non-Cp structures which they appear to be asserting. Regarding applicants' discussion of this issue in the appeal brief, it should be noted that no claims are rejected on grounds of indefiniteness, and therefore this issue is not appealable subject matter.

Regarding the rejection over Chen and supporting references, applicants allege that modification or development of the catalyst disclosed in Chen must necessarily be

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predicated on clear evidence that the use of a support would result in a catalyst which is effective at high temperature. However, no such requirement exists. Applicants have entirely ignored the fact that the performance of the Chen catalyst far exceeds that of corresponding silyl-bridged zirconocenes for the broad range of useful temperatures shown in the reference (see pg. 749, second column and Table 1), and such dramatic improvement provides clear motivation to use such effective catalysts in other conventional forms, such as in a supported mode.

Regarding the rejection over Winter '396 alone, applicants' argument has been addressed in the Office action mailed 5/2/2003.

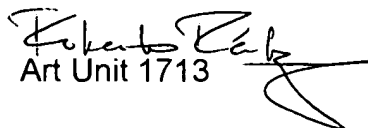
Allowable Subject Matter

8. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Rábago whose telephone number is (703) 308-4347. The examiner can normally be reached on Monday - Friday from 8:30 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached at (703) 308-2450. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


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RR
December 2, 2003

ROBERTO RABAGO
PATENT EXAMINER